

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Implementation of the Local Competition  
Provisions in the Telecommunications Act  
of 1996

CC Docket No. 96-98

Interconnection between Local Exchange  
Carriers and Commercial Mobile Radio  
Service Providers

CC Docket No. 95-185

To: The Commission

**PETITION FOR RECONSIDERATION  
OF RAND McNALLY & COMPANY**

Rand McNally & Company ("RMC"), in accordance with 47 C.F.R. 1.429, submits this Petition for Reconsideration of the First Report and Order adopted by the Commission on August 8, 1996, in the above-referenced proceeding (the "Order"). RMC requests that the Commission reconsider the Order insofar as it mandates use of RMC's Major Trading Areas ("MTAs"), without RMC's consent, to define the local service area for calls to or from a commercial mobile radio service ("CMRS") network for the purposes of applying reciprocal compensation obligations under Section 251(b)(5) of the Communications Act of 1934, as amended (the "Act").

RMC is the copyright owner of the MTA/BTA Listings, embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map").<sup>1</sup> The Commission expressly has acknowledged this fact each time it has proposed or mandated use of MTAs or BTAs in the past.<sup>2</sup>

<sup>1</sup> The MTA/BTA Listings and the MTA/BTA Map are referred to collectively herein as the "MTA/BTA Listings."

<sup>2</sup> See, inter alia, In the Matter of Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Fixed Service, Report and Order, MM Docket No. 94-131 (rel. June 30, 1995) at ¶ 35; In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Notice of Proposed Rule Making, WT Docket No. 96-18 (rel. Feb. 9, 1996) at ¶ 35.

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Notwithstanding the Commission's consistent recognition of RMC's copyright interests in the MTA/BTA Listings in the context of every other proceeding in which the use of MTAs and BTAs has been proposed, the Order adopts MTAs without any mention of RMC, let alone RMC's protectible ownership interest in the MTA/BTA Listings.

As is implicit in the Commission's previous discussions of the MTA/BTA Listings, the Commission has no authority to make use of such listings without RMC's consent. The MTA/BTA Listings represent a significant investment on RMC's part. RMC did not propose use of MTAs in the instant proceeding nor has it done so in any other Commission proceeding. If the Commission mandates use of MTAs or BTAs absent a license from RMC, it will amount to an unlawful taking of RMC's property. All parties to the relevant proceedings, and anyone with an interest therein, will contend that they may reproduce, adapt, and distribute the MTA/BTA Listings and the MTA/BTA Map without RMC's consent, effectively removing the copyright protection from these works. Moreover, the Commission will itself be an infringer of RMC's copyright.

It is important to note that, each time in the past that the Commission has proposed or mandated use of MTAs and/or BTAs, RMC has cooperated fully and in good faith with the Commission and other interested parties to enter into licensing agreements on fair and non-discriminatory terms to permit such parties and the Commission to make use of the MTA/BTA Listings. In this regard, RMC has entered into licensing agreements with the Personal Communications Industry Association, the American Mobile Telecommunications Association, and the Wireless Cable Association International allowing interested parties to use the MTA/BTA Listings — in accordance with the terms and conditions of such agreements — in connection with the following services: 2 GHz broadband PCS, 900 MHz narrowband PCS, 800 MHz SMR, LMDS, 900 MHz SMR, and MDS.

In light of RMC's demonstrable willingness to work with the Commission and its licensees in the past, as well as the Commission's consistent recognition of RMC's copyright interest in the MTA/BTA Listings, the failure in the Order to recognize expressly RMC's rights and the need to obtain RMC's consent prior to adoption of use of MTAs in connection with Section 251(b)(5) of the Act is deeply troubling, not to mention an unlawful infringement of RMC's rights.

For this reason, RMC urges the Commission to reconsider its decision to use MTAs in the Order and, in doing so, to:

- (i) make clear that RMC is the copyright owner of the MTA/BTA Listings;
- (ii) state plainly that the use of MTAs as geographic boundaries to define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under Section 251(b)(5) of the Act — or, indeed, for any other purpose not covered by a license from RMC — cannot proceed without a license from RMC;
- (iii) note that there is presently no license in place covering the use of MTAs by all interested parties in connection with Section 251(b)(5);
- (iv) undertake to enter into such an agreement with RMC or encourage other interested parties to contact RMC to explore a licensing arrangement; and
- (v) state that the use of property in which RMC has a copyright interest without RMC's prior consent will result in copyright infringement and will expose such user to a claim of copyright infringement.

Such action is fully consistent with the Commission's actions in connection with other services for which the use of MTAs or BTAs have been proposed or adopted.<sup>3</sup> If the Commission and/or other interested parties are unwilling to enter into a license agreement with RMC in the context of this proceeding, then the Commission should select different geographic boundaries for the purposes of Section 251(b)(5). In no event can RMC permit its property to be appropriated by fiat.

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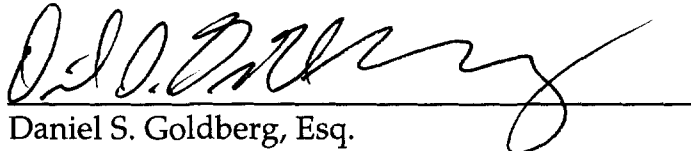
<sup>3</sup> Id.

For the foregoing reasons, RMC urges the Commission to reconsider the Order in a manner consistent with this Petition for Reconsideration.

Respectfully submitted,

RAND McNALLY & COMPANY

By:

A handwritten signature in black ink, appearing to read 'D. S. Goldberg', written over a horizontal line.

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September 30, 1996